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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,715	10/22/2003	Robert E. Burrell	14072-037001 / W 618	9773
26161	7590	03/22/2006	EXAMINER	
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			PAK, JOHN D	
			ART UNIT	PAPER NUMBER

1616

DATE MAILED: 03/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/690,715

Applicant(s)

BURRELL ET AL.

Examiner

JOHN PAK

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-33 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-6, directed to a pharmaceutical composition comprising a silver-containing material, wherein the silver-containing material is atomically disordered silver.
- II. Claims 1-6, directed to a pharmaceutical composition comprising a silver-containing material, wherein the silver-containing material is not atomically disordered silver.
- III. Claims 7-14 and 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being atomically disordered and crystalline, and the condition is a skin or integument condition, which is a bacterial condition, biofilm condition, non-viral microbial condition, inflammatory condition, or fungal condition.
- IV. Claims 7-14 and 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being atomically disordered and crystalline, and the condition is a viral skin or integument condition.
- V. Claims 7-14 and 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being atomically disordered and crystalline, and the condition is an autoimmune skin or integument condition.

- VI. Claims 7-14 and 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being atomically disordered and crystalline, and the condition is an idiopathic skin or integument condition.
- VII. Claims 7-14 and 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being atomically disordered and crystalline, and the condition is a non-cancerous hyperproliferative skin or integument condition.
- VIII. Claims 7-14 and 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being atomically disordered and crystalline, and the condition is a cancerous skin or integument condition.
- IX. Claims 7-14 and 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being not atomically disordered, and the condition is a skin or integument condition, which is a bacterial condition, biofilm condition, non-viral microbial condition, inflammatory condition, or fungal condition.
- X. Claims 7-14 and 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being not atomically disordered, and the condition is a viral skin or integument condition.

- XI. Claims 7-14 and 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being not atomically disordered, and the condition is an autoimmune skin or integument condition.
- XII. Claims, directed to a method of treating a condition, comprising administering a silver-containing material, said material being not atomically disordered, and the condition is an idiopathic skin or integument condition.
- XIII. Claims 7-14 and 24-27, directed to a method of treating a condition, comprising administering a silver-containing material said material being not atomically disordered, and the condition is a non-cancerous hyperproliferative skin or integument condition.
- XIV. Claims 7-14 and 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being not atomically disordered, and the condition is a cancerous skin or integument condition.
- XV. Claims 15-23 and 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being atomically disordered and crystalline, and the condition is a respiratory condition, which is a bacterial condition, biofilm condition, non-viral microbial condition, inflammatory condition, or fungal condition.

- XVI. Claims 15-23 and 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being atomically disordered and crystalline, and the condition is a viral respiratory condition.
- XVII. Claims 15-23 and 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being atomically disordered and crystalline, and the condition is an autoimmune respiratory condition.
- XVIII. Claims 15-23 and 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being atomically disordered and crystalline, and the condition is an idiopathic respiratory condition.
- XIX. Claims 15-23 and 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being atomically disordered and crystalline, and the condition is a non-cancerous hyperproliferative respiratory condition.
- XX. Claims 15-23 and 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being atomically disordered and crystalline, and the condition is a cancerous respiratory condition.
- XXI. Claims 15-23 and 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being not atomically disordered, and the condition is a respiratory condition, which is a bacterial

condition, biofilm condition, non-viral microbial condition, inflammatory condition, or fungal condition.

XXII. Claims 15-23 and 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being not atomically disordered, and the condition is a viral respiratory condition.

XXIII. Claims 15-23 and 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being not atomically disordered, and the condition is an autoimmune respiratory condition.

XXIV. Claims 15-23 and 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being not atomically disordered, and the condition is an idiopathic respiratory condition.

XXV. Claims 15-23 and 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being not atomically disordered, and the condition is a non-cancerous hyperproliferative respiratory condition.

XXVI. Claims 15-23 and 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being not atomically disordered, and the condition is a cancerous respiratory condition.

XXVII. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being atomically

disordered and crystalline, and the condition is a musculo-skeletal condition, which is a bacterial condition, biofilm condition, non-viral microbial condition, inflammatory condition, or fungal condition.

XXVIII. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being atomically disordered and crystalline, and the condition is a viral musculo-skeletal condition.

XXIX. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being atomically disordered and crystalline, and the condition is an autoimmune musculo-skeletal condition.

XXX. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being atomically disordered and crystalline, and the condition is an idiopathic musculo-skeletal condition.

XXXI. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being atomically disordered and crystalline, and the condition is a non-cancerous hyperproliferative musculo-skeletal condition.

XXXII. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being atomically

disordered and crystalline, and the condition is a cancerous musculo-skeletal condition.

XXXIII. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being not atomically disordered, and the condition is a musculo-skeletal condition, which is a bacterial condition, biofilm condition, non-viral microbial condition, inflammatory condition, or fungal condition.

XXXIV. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being not atomically disordered, and the condition is a viral musculo-skeletal condition.

XXXV. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being not atomically disordered, and the condition is an autoimmune musculo-skeletal condition.

XXXVI. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being not atomically disordered, and the condition is an idiopathic musculo-skeletal condition.

XXXVII. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being not atomically disordered, and the condition is a non-cancerous hyperproliferative musculo-skeletal condition.

- XXXVIII. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being not atomically disordered, and the condition is a cancerous musculo-skeletal condition.
- XXXIX. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material , and the condition is a circulatory condition, which is a bacterial condition, biofilm condition, non-viral microbial condition, inflammatory condition, or fungal condition.
- XL. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being atomically disordered and crystalline, and the condition is a viral circulatory condition.
- XLI. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being atomically disordered and crystalline, and the condition is an autoimmune circulatory condition.
- XLII. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being atomically disordered and crystalline, and the condition is an idiopathic circulatory condition.
- XLIII. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being atomically

disordered and crystalline, and the condition is a non-cancerous hyperproliferative circulatory condition.

XLIV. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being atomically disordered and crystalline, and the condition is a cancerous circulatory condition.

XLV. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being not atomically disordered, and the condition is a circulatory condition, which is a bacterial condition, biofilm condition, non-viral microbial condition, inflammatory condition, or fungal condition.

XLVI. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being not atomically disordered, and the condition is a viral circulatory condition.

XLVII. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being not atomically disordered, and the condition is an autoimmune circulatory condition.

XLVIII. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being not atomically disordered, and the condition is an idiopathic circulatory condition.

- XLIX. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being not atomically disordered, and the condition is a non-cancerous hyperproliferative circulatory condition.
- L. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being not atomically disordered, and the condition is a cancerous circulatory condition.
- LI. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being atomically disordered and crystalline, and the condition is a mucosal or serosal condition, which is a bacterial condition, biofilm condition, non-viral microbial condition, inflammatory condition, or fungal condition.
- LII. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being atomically disordered and crystalline, and the condition is a viral mucosal or serosal condition.
- LIII. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being atomically disordered and crystalline, and the condition is an autoimmune mucosal or serosal condition.

- LIV. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being atomically disordered and crystalline, and the condition is an idiopathic mucosal or serosal condition.
- LV. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being atomically disordered and crystalline, and the condition is a non-cancerous hyperproliferative mucosal or serosal condition.
- LVI. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being atomically disordered and crystalline, and the condition is a cancerous mucosal or serosal condition.
- LVII. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being not atomically disordered, and the condition is a mucosal or serosal condition, which is a bacterial condition, biofilm condition, non-viral microbial condition, inflammatory condition, or fungal condition.
- LVIII. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being not atomically disordered, and the condition is a viral mucosal or serosal condition.

- LIX. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being not atomically disordered, and the condition is an autoimmune mucosal or serosal condition.
- LX. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being not atomically disordered, and the condition is an idiopathic mucosal or serosal condition.
- LXI. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being not atomically disordered, and the condition is a non-cancerous hyperproliferative mucosal or serosal condition.
- LXII. Claims 24-27, directed to a method of treating a condition, comprising administering a silver-containing material, said material being not atomically disordered, and the condition is a cancerous mucosal or serosal condition.
- LXIII. Claims 28-29, directed to a free standing powder of a silver containing material, wherein the silver-containing material is atomically disordered silver.
- LXIV. Claims 28-29, directed to a free standing powder of a silver containing material, wherein the silver-containing material is not atomically disordered silver.
- LXV. Claims 30-33, directed to an aerosol comprising a silver-containing material, wherein the silver-containing material is atomically disordered silver.
- LXVI. Claims 30-33, directed to an aerosol comprising a silver-containing material,

wherein the silver-containing material is not atomically disordered silver.

It is an understatement to say that there are multiple inventions contained in applicant's claims. The Examiner cannot think of any disease that is not covered by applicant's claimed invention. Take a look at claims 13, 16-17 and 25-26 and see if anyone could disagree. Applicant's invention apparently treats all that ails the Mammalian Kingdom. The composition claims are open to all silver-containing material. It must be noted that prior art on antimicrobial use of silver goes back to the Roman times. Since that time, the art on silver compounds has developed to the point that specific types of silver compounds and specific types of silver formulation forms have attained a separate status in the art as separate subjects for inventive effort.

In response to applicant's broad claim scope, the Examiner has attempted to restrict based on patentably distinct inventive subjects, which would require less than undue burden to reasonably search and examine. Applicant is advised that should applicant amend the claims in any way, he should expect corresponding alterations or additions of groups, if appropriate. Each of the invention groups is patentably distinct over the others by virtue of separate conditions being treated, distinct therapeutic agents, distinct administration protocol or combinations thereof. Distinctness is supported by separate patentability of somewhat similarly limited inventions in the art: U.S. Patent No. 6,939,568, claims directed to method of treating inflammation of the skin with atomically disordered metal; U.S. Patent No. 6,692,773, claims

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directed to treating hyperproliferative skin condition with atomically disordered metal; U.S. Patent No. 6,692,773, claims directed to silver-containing composition for treating sinusitis. With respect to search and examination burden, applicant should know that the Examiner is allotted less than 14 hours to examine this application from start to finish (abandonment, allowance or Examiner's Answer). It is humanly impossible for one Examiner to search and examine an application like this without an extensive restriction. The search and examination of more than one invention group would place an undue burden on the Examiner if the restriction were not required, because so many distinct and divergent disease conditions and active agents are encompassed.

Therefore, for reasons of distinctness and undue burden, the restriction requirement as set forth above is deemed to be proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143). It is suggested that the claims be amended to reflect the elected subject matter.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

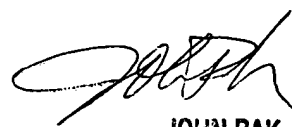
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Any inquiry concerning this communication or earlier communications from the Examiner should be directed to JOHN PAK whose telephone number is (571)272-0620. The Examiner can normally be reached on Monday to Friday from 8 AM to 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's SPE, Sreeni Padmanabhan, can be reached on (571)272-0629. The fax phone number for the organization where this application or proceeding is assigned is (571)273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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